

The People's Law Firm
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July 21, 2006

The Honorable William Connelly
United States Magistrate Judge
6500 Cherrywood Lane
Greenbelt, MD 20770

Re: *Pamela Peterson v. United States*
Civil Action 03:cv1459

Plaintiff's Submission Pursuant to Order Scheduling Settlement Conference

Dear Judge Connelly:

I represent the minor plaintiff, Pamela Peterson, and her mother, Lynette Peterson, in a medical malpractice case brought under the Federal Tort Claims Act, 28 USC §§ 2671 *et seq.* Please accept this letter as the plaintiff's submission in accordance with your letter order of July 1, 2006, requesting that each party submit, *ex parte*, a pre-settlement conference position paper for your consideration.

1. Facts.

Plaintiff asserts that at the trial of this matter her evidence will demonstrate the following:

- a. Pamela Peterson is the 17-year-old daughter of a medically retired – and now deceased – Air Force officer. At a high school basketball practice, on or about January 15, 2003, Pamela suffered a tear of the meniscus in her right knee. Pamela was seen at the Ft. Meade medical clinic – a facility owned, operated and controlled by the defendant United States – and referred to Walter Reed Army Medical Center for further evaluation.
- b. On January 16, 2003, Pamela was examined by Dr. (Lieutenant Colonel) Farrington Pearl, III, a board certified orthopedic surgeon. Dr. Pearl is member of the U.S. Army and during all of the times when he rendered care he was under the direction and control of the United States.

- c. Upon examination, Dr. Pearl diagnosed that Pamela had suffered a “bucket handle” tear of the meniscus in her right knee. He informed both Pamela and her mother that the tear could be repaired by arthroscopic surgery. Dr. Pearl told Mrs. Peterson that the operation would last less than 2 hours and that Pamela would be discharged within 48 hours of the surgery. Additionally, Pamela asked Dr. Pearl whether the injury would impact her ability to play basketball. Dr. Pearl told Pamela that this injury could be repaired without difficulty and that she would be “back on the court long before the Terrapins needed her.” (Dr. Pearl and Pamela had a lengthy discussion about the efforts that the University of Maryland and other schools had made to recruit her to play basketball.)
- d. Dr. Pearl performed arthroscopic surgery upon Pamela at Walter Reed on January 18th. Neither the intraoperative anesthesia record nor the surgical note reveals any complication encountered during the surgery. None of the operating room personnel – all of whom have been deposed – note any complication was encountered.
- e. In the immediate post-operative period, Pamela complained of excruciating pain in her right calf. Her mother testified that Pamela complained repeatedly to her and to Nurse Farris about the pain. Nurse Farris provided additional pain medication, but did not undertake any examination of Pamela. Four hours post-operatively, and after Nurse Farris rotated off of the post-operative floor, the nurses caring for Pamela were unable to detect a pedal pulse in her right foot.
- f. Pamela was, thereafter, examined by both Dr. Pearl and other members of the surgical team. Dr. Pearl diagnosed compartment syndrome and a resident surgeon, under Dr. Pearl’s supervision, performed an emergency fasciotomy of Pamela’s right calf. The fasciotomy consisted of several long incisions deep into the calf on both sides.
- g. Pamela was also evaluated by a vascular surgeon who ordered vascular studies that revealed that her right femoral artery had been severed at about the level of her knee. Pamela was returned to the operating room and a vascular graft was obtained in order to repair the severed artery. Dr. (Major) Paul Flixon, a vascular surgeon, repaired the artery.
- h. Despite the emergency repair, Pamela suffered a nerve injury in right leg. The injury causes a right foot drop which impairs her ability to walk without falling and prevents her from playing basketball or engaging in any sports which require her to run or jump. Plaintiff’s expert witness, Dr. John Cardea, a board certified orthopedic surgeon, will testify that Pamela suffers a permanent, partial disability of her right leg. He will estimate her total disability at 25%.

- i. The injury she sustained caused Pamela extreme pain, albeit for only a short period of time. It also left her with unsightly scars on both sides of her right calf.
- j. Pamela is 17 years old and will turn 18 on September 9, 2005. She has been accepted for admission to the University of Maryland and Towson State College. Although prior to her injury Pamela had been recruited for a full athletic scholarship at various schools, including the University of Maryland, at the present, no scholarship offers have been made to her.
- k. Dr. John Cardea, plaintiff's expert witness on the standard of care and causation, will testify that the standard of care for arthroscopic surgery requires that no cutting should occur except where the physician has direct visualization of the cutting instruments. Further, since Dr. Pearl did not appreciate that the femoral artery had been severed at the time of surgery, it is apparent that he made a cut without visualizing the cutting instrument that caused the damage. Dr. Cardea will further testify that it was incomprehensible to him that Dr. Pearl did not identify the injury prior to concluding the surgery. He asserts that when Dr. Pearl released the tourniquet used on the patient's leg during the surgery, he should have observed blood in the operative field before terminating the surgery. Both the failure to note the injury prior to the conclusion of the surgery and severing the artery during the surgery constitute negligence. Finally, Dr. Cardea will testify that the injuries suffered by Pamela, including the emergency fasciotomy, the vascular surgery and the foot drop were proximately caused by the negligence of Dr. Pearl.
- l. Dr. Paul Bixby, a board certified neurologist, will testify for the plaintiff. Dr. Bixby will assert that plaintiff's foot drop was caused by excessive blood that accumulated in the plaintiff's calf as a result of the severed artery. He will testify that plaintiff's foot drop is permanent and cannot be repaired by existing medical techniques.
- m. As a result of her injury, Pamela's hospitalization was 15 days longer than would have otherwise been anticipated. Pamela missed about 30 days of school and required 6 months of intensive rehabilitation. The medical costs paid by Mrs. Peterson during Pamela's rehabilitation amount to just under \$27,000.

2. Major Weaknesses – Factual and Legal

- a. Plaintiff. Plaintiff's case on liability is strongest; her damages evidence is less so. The plaintiff has a permanent neurological injury. Nevertheless, her rehabilitation and adaptation has been mostly successful. She is presently able to walk, albeit with a slight limp. She will be precluded from most sports, but others, for example, swimming and cycling, are still

available to her. Plaintiff has claimed the loss of a scholarship offers for her athletic accomplishments. To be sure, no scholarship offers have presently been made to her. However, she is eligible for substantial need-based financial assistance and it is possible that she may be offered a full scholarship at Towson before the September term begins. Finally, although plaintiff has made a lost wage claim, she concedes that, perhaps with accommodations and possibly without, she may be able to perform many high-paying occupations, e.g. attorney, physician, etc.

- b. Defendant. The finding of negligence by Dr. Pearl appears to be nearly certain. To be sure, defendant has identified an expert who will testify that the vessel might have either ruptured due to a pre-existing defect or been inadvertently injured in the early post-operative period. Neither of these possibilities is supported by medical literature and defendant's expert concedes that an intraoperative iatrogenic injury cannot be ruled out.

3. Evaluation of Damages.

A verdict in excess of \$1,500,000 or a verdict less than \$150,000 is unlikely.

4. Settlement negotiations.

Plaintiff made a demand for \$2.5 million early in discovery. To date, the defendant has not made an offer.

5. Attorney's Fees and Cost of Litigation.

Plaintiff's anticipated costs for trial amount to approximately \$50,000. These include expert fees, witness fees and related costs. This matter is being prosecuted on a contingent fee basis. Attorney's fees are limited by statute to 25%.

Thank you for your consideration of these matters.

Sincerely,

Margaret O. Steinbeck
Counsel for the Plaintiff